

109TH CONGRESS
2D SESSION

S. 2644

To harmonize rate setting standards for copyright licenses under sections 112 and 114 of title 17, United States Code, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 25, 2006

Mrs. FEINSTEIN (for herself, Mr. GRAHAM, and Mr. FRIST) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To harmonize rate setting standards for copyright licenses under sections 112 and 114 of title 17, United States Code, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Platform Equality and
5 Remedies for Rights Holders in Music Act of 2006” or
6 the “Perform Act of 2006”.

7 **SEC. 2. RATE SETTING STANDARDS.**

8 (a) **SECTION 112 LICENSES.**—Section 112(e)(4) of
9 title 17, United States Code, is amended in the third sen-

1 tence by striking “fees that would have been negotiated
 2 in the marketplace between a willing buyer and a willing
 3 seller” and inserting “the fair market value of the rights
 4 licensed under this subsection”.

5 (b) SECTION 114 LICENSES.—Section 114(f) of title
 6 17, United States Code, is amended—

7 (1) by striking paragraph (1);

8 (2) by redesignating paragraphs (2), (3), (4),
 9 and (5) as paragraphs (1), (2), (3), and (4), respec-
 10 tively; and

11 (3) in paragraph (1) (as redesignated under
 12 this subsection)—

13 (A) in subparagraph (A), by striking all
 14 after “Proceedings” and inserting “under chap-
 15 ter 8 shall determine reasonable rates and
 16 terms of royalty payments for transmissions
 17 during 5-year periods beginning on January 1
 18 of the second year following the year in which
 19 the proceedings are to be commenced, except
 20 where a different transitional period is provided
 21 under section 6(b)(3) of the Copyright Royalty
 22 and Distribution Reform Act of 2004, or such
 23 other period as the parties may agree.”;

24 (B) in subparagraph (B)—

1 (i) in the first sentence, by striking
 2 “affected by this paragraph” and inserting
 3 “under this section”;

4 (ii) in the second sentence, by striking
 5 “eligible nonsubscription transmission”;
 6 and

7 (iii) in the third sentence—

8 (I) by striking “eligible non-
 9 subscription services and new sub-
 10 scription”; and

11 (II) by striking “rates and terms
 12 that would have been negotiated in
 13 the marketplace between a willing
 14 buyer and a willing seller” and insert-
 15 ing “the fair market value of the
 16 rights licensed under this section”;

17 (iv) in the fourth sentence, by striking
 18 “base its” and inserting “base their”;

19 (v) in clause (i), by striking “and”
 20 after the semicolon;

21 (vi) in clause (ii), by striking the pe-
 22 riod and inserting “; and”;

23 (vii) by inserting after clause (ii) the
 24 following:

1 “(iii) the degree to which reasonable
2 recording affects the potential market for
3 sound recordings, and the additional fees
4 that are required to be paid by services for
5 compensation.”; and

6 (viii) in the matter following clause
7 (ii), by striking “described in subpara-
8 graph (A)”; and

9 (C) by striking subparagraph (C) and in-
10 serting the following:

11 “(C) The procedures under subparagraphs
12 (A) and (B) shall also be initiated pursuant to
13 a petition filed by any copyright owners of
14 sound recordings or any transmitting entity in-
15 dicating that a new type of service on which
16 sound recordings are performed is or is about
17 to become operational, for the purpose of deter-
18 mining reasonable terms and rates of royalty
19 payments with respect to such new type of serv-
20 ice for the period beginning with the inception
21 of such new type of service and ending on the
22 date on which the royalty rates and terms for
23 preexisting subscription digital audio trans-
24 mission services, eligible nonsubscription serv-
25 ices, or new subscription services, as the case

1 may be, most recently determined under sub-
2 paragraph (A) or (B) and chapter 8 expire, or
3 such other period as the parties may agree.”.

4 (c) CONTENT PROTECTION.—Section 114(d)(2) of
5 title 17, United States Code, is amended—

6 (1) in subparagraph (A)—

7 (A) in clause (ii), by striking “and” after
8 the semicolon;

9 (B) in clause (iii), by adding “and” after
10 the semicolon; and

11 (C) by adding after clause (iii) the fol-
12 lowing:

13 “(iv) the transmitting entity takes no
14 affirmative steps to authorize, enable,
15 cause or induce the making of a copy or
16 phonorecord by or for the transmission re-
17 cipient and uses technology that is reason-
18 ably available, technologically feasible, and
19 economically reasonable to prevent the
20 making of copies or phonorecords embody-
21 ing the transmission in whole or in part,
22 except for reasonable recording as defined
23 in this subsection;”;

24 (2) in subparagraph (C)—

25 (A) by striking clause (vi); and

1 (B) by redesignating clauses (vii) through
2 (ix) as clauses (vi) through (viii), respectively;
3 and

4 (3) by adding at the end the following:

5 “For purposes of subparagraph (A)(iv), the mere offering
6 of a transmission and accompanying metadata does not
7 in itself authorize, enable, cause, or induce the making of
8 a phonorecord. Nothing shall preclude or prevent a per-
9 forming rights society or a mechanical rights organization,
10 or any entity owned in whole or in part by, or acting on
11 behalf of, such organizations or entities, from monitoring
12 public performances or other uses of copyrighted works
13 contained in such transmissions. Any such organization or
14 entity shall be granted a license on either a gratuitous
15 basis or for a de minimus fee to cover only the reasonable
16 costs to the licensor of providing the license, and on rea-
17 sonable, nondiscriminatory terms, to access and re-
18 transmit as necessary any content contained in such trans-
19 missions protected by content protection or similar tech-
20 nologies, if such licenses are for purposes of carrying out
21 the activities of such organizations or entities in moni-
22 toring the public performance or other uses of copyrighted
23 works, and such organizations or entities employ reason-
24 able methods to protect any such content accessed from
25 further distribution.”.

1 (d) DEFINITION.—Section 114(j) of title 17, United
2 States Code, is amended—

3 (1) by redesignating paragraphs (10) through
4 (15) as paragraphs (11) through (16), respectively;
5 and

6 (2) by inserting after paragraph (9) the fol-
7 lowing:

8 “(10)(A) A ‘reasonable recording’ means the
9 making of a phonorecord embodying all or part of a
10 performance licensed under this section for private,
11 noncommercial use where technological measures
12 used by the transmitting entity, and which are incor-
13 porated into a recording device—

14 “(i) permit automated recording or play-
15 back based on specific programs, time periods,
16 or channels as selected by or for the user;

17 “(ii) do not permit automated recording or
18 playback based on specific sound recordings, al-
19 bums, or artists;

20 “(iii) do not permit the separation of com-
21 ponent segments of the copyrighted material
22 contained in the transmission program which
23 results in the playback of a manipulated se-
24 quence; and

“(iv) do not permit the redistribution, retransmission or other exporting of a phonorecord embodying all or part of a performance licensed under this section from the device by digital outputs or removable media, unless the destination device is part of a secure in-home network that also complies with each of the requirements prescribed in this paragraph.

“(B) Nothing in this paragraph shall prevent a consumer from engaging in non-automated manual recording and playback in a manner that is not an infringement of copyright.”.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) SECTION 114.—Section 114(f) of title 17, United States Code (as amended by subsection (b) of this section), is further amended—

(A) in paragraph (1)(B), in the first sentence, by striking “paragraph (3)” and inserting “paragraph (2)”; and

(B) in paragraph (4)(C), by striking “under paragraph (4)” and inserting “under paragraph (3)”.

(2) SECTION 804.—Section 804(b)(3)(C) of title 17, United States Code, is amended—

1 (A) in clause (i), by striking “and
2 114(f)(2)(C)”;

3 (B) in clause (iv), by striking “or
4 114(f)(2)(C), as the case may be”.

5 **SEC. 3. REGISTER OF COPYRIGHTS MEETING AND REPORT.**

6 (a) MEETING.—Not later than 60 days after the
7 Copyright Royalty Board’s final determination in Docket
8 No. 2005–1 CRB DTRA, the Register of Copyrights shall
9 convene a meeting among affected parties to discuss
10 whether to recommend creating a new category of limited
11 interactive services, including an appropriate premium
12 rate for such services, within the statutory license con-
13 tained in section 114 of title 17, United States Code.

14 (b) REPORT.—Not later than 90 days after the con-
15 vening of the meeting under subsection (a), the Register
16 of Copyrights shall submit a report on the discussions at
17 that meeting to the Committee on the Judiciary of the
18 Senate and the Committee on the Judiciary of the House
19 of Representatives.

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